Section 5 Referral Inspector's Report ACP-323892-25

Question	Whether the refurbishment of two existing poultry houses approved under planning reference nos. 15/324 and 15/523, is or is not development, or is or is not exempted development.
Location	Ballyhugh, Ballyconnell, County Cavan

Declaration

Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	435
Applicant for Declaration	Finbar Kiernan
Planning Authority Decision	Referral to An Coimisiún Pleanála under Section 5(4) of the Act

Referral

Referred by	Cavan County Council
Observer(s)	None

Date of Site Inspection	8th June 2026
Inspector	Gary Farrelly

1.0 Introduction

1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposal in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

2.0 Site Location and Description

2.1. The subject site is located within the rural townland of Ballyhugh, County Cavan, approximately 4km south of the town of Ballyconnell and approximately 5km west of the town of Belturbet. The site comprises of an existing poultry farm consisting of two poultry houses (*previously granted permission under application refs. 15/324 and 15/523*). Access to the farmyard is via an existing private road taken off the local road L-1054, which is approximately 60 metres south of the junction with the National Road N-87. The access road divides the farmyard with 1 no. poultry house located to the north of the road (ref. 15/523) and the other poultry house located to the south of the road (ref. 15/324). The immediate area is characterised by agricultural land, however, there is a high density of one off rural dwellings located to the northeast of the farmyard with the nearest dwelling be located approximately 90 metres from the poultry house granted under ref. 15/523.

3.0 The Question

3.1. The Commission should note that the applicant did not outline a specific question on the submitted section 5 application form and referred the planning authority to the submitted report. Having reviewed the applicant's submitted report, I consider that the question should be framed as follows:

- Whether the refurbishment of two existing poultry houses granted permission under application refs. 15/324 and 15/523, involving the replacement of existing internal equipment consisting of a flat deck / slatted housing system with a multi-tier aviary housing system, including an opening to the side wall to facilitate a manure belt conveyor, to facilitate an increase in bird numbers from

16,000 (cumulative between the two houses) to c. 35,000, is or is not development and is or is not exempted development.

3.2. The section 5 application was accompanied by the submitted report referred to above (prepared by CLW Environmental Planners Limited), an Appropriate Assessment Screening Report (prepared by Whitehill Environmental), together with a site plan and a site location map (which were both submitted as part of planning application ref. 15/523).

4.0 Planning Authority Declaration

4.1. Declaration

The Planning Authority did not issue a declaration and referred the question to the Commission under Section 5(4) of the Planning and Development Act 2000, as amended.

4.2. Planning Authority Reports

Planning Report

The planning report on file from the assistant planner (AP) described the site location, the planning history of the site as well as the legislative context. The AP did note concerns raised by the Environment Section in a telephone call in terms of the environmental impacts of a significant increase in bird numbers. The AP recommended a referral to the Commission as per Section 5(4) of the Planning and Development Act 2000, as amended. This was endorsed by the Senior Planner.

5.0 Relevant Planning History

PA ref. 15/324 (*i.e. poultry farm south of access road*)

Ballyhugh Farms Ltd was granted permission to construct 1 no. free range poultry house (total floor area 1,486sqm) together with all ancillary structures and associated site works. The submitted application form and report outlined a total of 8,000 free range hens to be housed within the house.

Condition No. 1 of Grant

The development shall be carried out in accordance with the plans and particulars lodged with the application on the 28th July 2015 and as amended by the further plans and particulars received by the Planning Authority on the 16th October 2015 and 20th October 2015, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

PA ref. 15/523 (*i.e. poultry farm north of access road*)

Ballyhugh Farms was granted permission to construct 1 no. free range poultry house (total floor area 1,486sqm) together with all ancillary structures and associated site works. The submitted application form and report outlined a total of 8,000 free range hens to be housed within the house.

Condition No. 1 of Grant

The development shall be carried out in accordance with the plans and particulars lodged with the application on the 16th December 2015 and as amended by the further plans and particulars received by the Planning Authority on the 10th March 2016, except as may otherwise be required in order to comply with the following conditions.
Reason: In the interest of clarity.

6.0 Policy Context

6.1. Cavan County Development Plan 2022-2028

This Plan, which incorporates the Local Area Plan for Cavan Town, was adopted by elected members on 30th May 2022 and came into effect on 11th July 2022. There have been no variations to date with Notice of Proposed Variation No. 1 issued on 4th June 2026. This proposed variation arises from the publication of the National Planning Framework First Revision (2025), and the subsequent NPF Implementation: Housing Growth Requirements Guidelines for Planning Authorities (2025).

For the purposes of this referral and the restrictions on exemption set out in Article 9 of the Planning and Development Regulations 2001, as amended, the subject site is not located within any designated geological heritage areas (Appendix 12 of the Plan) scenic views or viewpoints (Appendix 16 of the Plan) or high landscape areas (Appendix 18 of the Plan).

6.2. Natural Heritage Designations

Having reviewed the National Parks and Wildlife Service's (NPWS) designations viewer[1], the subject site is not located within any designated natural heritage site. The nearest designated site is Lough Oughter and Associated Loughs proposed Natural Heritage Area (pNHA) which is located approximately 400 metres east of the farmyard. This pNHA is also a Special Area of Conservation (SAC) designation at a point approximately 700 metres northeast of the northern poultry house (Site Code 000007).

7.0 The Referral

The planning authority made no declaration on the question put forward by the applicant and referred the question to the Commission under Section 5(4) of the Planning and Development Act 2000, as amended.

7.1. Applicant's Case

The applicant considers that the works comprising refurbishment of an existing agricultural building on the lands is development and is exempted development. The case put forward by the applicant is summarised as follows:

- The proposed works relate to the internal refurbishment and modernisation of the existing poultry houses with no construction or other significant works required. The works will involve the replacement of internal equipment (flat deck / slatted housing system) with a more modern, high welfare, aviary housing system with improved sustainability and reduced environmental impact.
- The change in housing system will facilitate an increase in bird numbers from 16,000 (cumulative between the two houses) to c. 35,000 birds (16,000 of which

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1 https://experience.arcgis.com/experience/edf34d92e28040fd87d3d14f55d8d95f#data_s=id%3Aa098bb9afd314c0897703b17b4a8f1cb-18a40c83b2d-layer-10%3A74 (*Accessed 9th June 2026*)

will operate as free range which is limited by the available land area and 19,000 operating as barn housing).

- The existing poultry houses, approved under planning application refs. 15/324 and 15/523, have been operating as a free range enterprise for the last 7-10 years.
- In the existing flat deck /slatted system the nest boxes are down the centre of the house with a slatted floor on each side. The birds are housed on a single level and the majority of the manure produced is collected in this slatted area. The manure is removed at the end of each cycle (every c. 13-15 months). The eggs are brought by conveyor to the egg store at the front of the house at which point they are graded and stacked/packed ready for transport.
- The proposed multi-tier aviary housing system will be used to maximise both the use of available space in a cage free system and the hen's natural behaviours, without compromising the minimum welfare needs of the hens, while at the same time enabling efficient egg production.
- The proposed works will involve the removal of the internal fixtures and fittings and replacement with the multi-tier aviary system. No alterations or extensions or other changes are required to the poultry house structure, with the exception of an opening in the side wall to facilitate a manure belt conveyor which will facilitate the removal of manure from the house on a weekly basis.
- It is not considered that such modifications to the building would render the appearance of the structure inconsistent with its character or that of neighbouring structures. They are considered exempted development under Section 4(1)(h) of the Act.
- The potential intensification of use of the poultry houses may constitute a material change of use and therefore development. However, while bird numbers will be increased any potential impact will be off-set by a more efficient, sustainable, welfare and environmentally friendly housing system, and revised operational and management practices. For example, ammonia emissions will be reduced (per bird place and in terms of cumulative total from the farm) due to improved housing conditions and manure management.

- Even if the intensification is deemed development, it comes within the remit of Section 4(1)(a) of the Planning and Development Act 2000, as amended. The development is still for the purposes of agriculture and this section of the Act does not specify that intensification of use is a material factor in, and/or restricts, its applicability. Reference is made to ABP-311366-21 for a similar conclusion that the use is exempted development.
- As the proposed works do not require EIA the provisions of Article 4(4) of the Act do not apply and therefore this restriction on exempted development does not apply.
- The application is accompanied by an Appropriate Assessment Screening Report. It is concluded that the proposed development, individually or in-combination with other plans or projects would not be likely to have a significant effect on any European site, in view of the site's conservation objectives. As the proposed works do not require AA, the provisions of Section 4(4) do not apply.
- Having regard to the nature, scale and extent of the works proposed, it is concluded that the works are development and are exempted development and come under the provisions of Section 4(1) of the Planning and Development Act, 2000, as amended.
- The end of the submitted report includes a section entitled 'further discussion re: intensification of activities'. It includes information on manure management, feed deliveries, egg and waste collection, staff traffic. It is considered that any alteration in traffic to and from the site will be imperceptible and appropriate site access and egress arrangements are already in place. The alterations proposed would be unlikely to have a material impact in regards to traffic and the proposed development would not constitute an intensification of use with any material planning impact or any material consequences in terms of the proper planning and sustainable development of the area. This is in keeping with previous Commission decisions including ABP-307417-20.

8.0 Relevant Statutory Provisions

8.1. Planning and Development Act 2000, as amended

<u>Section 2(1) Interpretation</u>

In this Act, except where the context otherwise requires ---

- "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the **<u>breeding and keeping of livestock (including any creature kept for the production of food</u>**, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;
- "use", in relation to land, does not include the use of the land by the carrying out of any works thereon;
- "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

<u>Section 3(1) – Development</u>

(1) In this Act, **<u>except where the context otherwise requires</u>**, "development" means -

(a) The carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land

<u>Section 4(1) – Exempted development</u>

The following shall be exempted developments for the purposes of this Act –

- (a) development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;
- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external

appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(4)

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

8.2. **Planning and Development Regulations 2001, as amended**

There are no provisions within the Regulations that are relevant to the subject question. Whilst there is an exemption provided for poultry houses within Schedule 2, Part 3, Class 7, this relates to a building of 75sqm, and thus is not applicable to this case. Accordingly, Article 9 is also not applicable.

9.0 Assessment

The Question of 'development'

9.1. The first question to determine is whether the proposed changes to the existing poultry houses to facilitate an increase in bird numbers constitutes 'development' by reference to Section 3 of the Planning and Development Act 2000, as amended (herein referred to as "*the Act*"). This is defined as "except where the context otherwise requires, the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land".

The Question of Works

9.2. The Commission should note that the applicant does not dispute that the proposed refurbishment works to the existing structures constitute works under Section 2(1) of the Act, and thus, constitutes development as per Section 3(1) of the Act.

9.3. I consider that the proposed works to the structures, which involves the removal of the existing flat deck / slatted system within the structures and replacement with a multi-tier aviary housing system, as well as the construction of an opening in the side wall to facilitate a manure belt conveyor, constitutes works on and over land, and therefore, constitutes development under Section 3(1) of the Act.

The Question of a Material Change of Use

9.4. The other element to the Section 3(1) definition of development relates to the making of a material change in the use of any structures or land. The Commission should note that the works are proposed to facilitate an increase in bird numbers between the two poultry houses. I note that these poultry houses were approved under application refs. 15/324 and 15/523. Therefore, having regard to the planning history pertaining to the site, the question of a material change of use must be interpreted as whether the original approved use would be so altered in character either by volume of activities or operations. It is the concept of 'intensification' of use which may constitute a material change which would trigger the requirement for planning permission.

9.5. I acknowledge that not every increase in use or intensification of use amounts to a material change of use. I refer the Commission to the judgement of Glassco Recycling Limited v An Bord Pleanála (2023, IEHC 293)[2] and its reference to Stanley v An Bord Pleanála within paragraph 74. The Commission should note that the proper application of the test to determine where a change of use is material requires the following:

- an identification of the actual change in use,
- what effects, impacts or consequences in planning terms arise from the said change, and
- the scale of those impacts and if they give rise to concerns.

9.6. I have reviewed the permissions granted by the planning authority under refs. 15/324 and 15/523 and note each permission was subject to 25 no. conditions. I note that both grants of permission did not include a specific condition that provided an express limitation on the maximum number of birds to be housed in each poultry house. Notwithstanding this, I note that the applicant provided information to the planning authority as part of both applications regarding the scale of the operations that specifically outlined that 8,000 birds would be housed in each poultry house. Accordingly, the planning authority attached the universal planning condition (i.e.

[2] https://ww2.courts.ie/acc/alfresco/09b2acaf-0cbc-4a83-8424-87263c62d9d8/2023_IEHC_293.pdf/pdf#view=fitH (*Accessed 9th June 2026*)

Condition No. 1) which required each development to be carried out in accordance with the plans and particulars submitted to the planning authority.

9.7. It is within this context that the applicant now proposes to increase the number of birds cumulatively between the two poultry houses from the permitted 16,000 to c.35,000. The Commission should note that this represents an increase of c. 120% on the total bird numbers approved under application refs. 15/324 and 15/523. More specifically, it would result in a 100% increase in the numbers approved under ref. 15/324 (from 8,000 to 16,000) and a c. 140% increase in the numbers approved under ref. 15/523 (8,000 to 19,000). Therefore, I consider that this increase to the significant numbers already permitted represents an intensification of use.

9.8. The next matter is to determine what effects, impacts or consequences in planning terms arise from the said change, the scale of those impacts and if they give rise to concerns. I note the case put forward by the applicant outlining the following:

- All manure will now be moved offsite weekly compared to the current practice of storing it onsite for 13-14 months. It is outlined that a new trailer with double the capacity will be purchased to facilitate no increase in traffic. It is also outlined that manure transport will be “significantly reduced” (my emphasis) by the increased trailer size.
- Weekly feed deliveries will remain unchanged with the only change being that full loads instead of half loads will be delivered.
- Egg collection, waste collection, and inspections frequency will remain unaltered.
- Staff traffic and range area management (movement and transport of silage bales off the farm) will be unaltered and unchanged.
- The only traffic that will be altered is an additional 3 loads of birds in and 3 loads out at the end of the cycle to accommodate the increased stock numbers which is considered insignificant.
- The submitted Appropriate Assessment Screening report also outlines that both houses will be upgraded to low emission housing specifications which will result in a reduction of ammonia emissions from current levels, even with the increase in stock numbers.

9.9. The Commission should note that I consider that the proposed over doubling of the capacity of the permitted poultry farm would have additional planning and environmental implications from what was previously approved. I also note that within the planning authority's report environmental concerns were raised by the Environment Section due to the increase in bird numbers.

9.10. It should be noted that the poultry farm is located approximately 90 metres from the nearest dwelling. Firstly, in terms of odour, I note that the planning report submitted by the applicant as part of application refs. 15/324 and 15/523 concluded no adverse odour impact for a number of reasons, including for the reason of stocking density being maintained at the design level. I note that this design level is now proposed to be increased to c. 35,000 birds. Notwithstanding any potential mitigation measures to reduce ammonia levels as set out in the submitted AA screening report, I consider that due to the over doubling the capacity of the farm this would result in additional odour issues that would be of a scale that would give rise to additional concerns on that already permitted.

9.11. Secondly, in terms of noise, the submitted planning report as part of application ref. 15/324 and 15/523 also noted no adverse impact due to noise for a number of reasons including for the reason of the houses having a lower stocking rate and the fact that birds will be outside during daylight hours. The Commission should note that the proposed development seeks to change the nature of the 16,000 permitted free range poultry farm to that of 16,000 free range and c. 19,000 barn birds (to be housed within one house). I consider that this proposed change in the nature of operations would result in additional noise issues that would be of a scale that would give rise to additional concerns on that already permitted.

9.12. Thirdly, in terms of traffic, it is my view that the over doubling of capacity of the poultry farm would result in a traffic impact that would give rise to additional concerns to that of the permitted applications. I note that manure is proposed to be removed routinely/weekly compared to the current practice of every 13/14 months. The applicant states that manure transport will be "significantly reduced by increased trailer size". I consider it unclear how manure removal which is currently removed off site every 13/14 months could be significantly reduced due to trailer size when it is proposed to change the frequency to weekly removals.

9.13. Overall, I consider that the proposed intensification of use to the already permitted activity represents a material change in the use of the permitted structures, and therefore, constitutes development under Section 3(1) of the Act.

Precedent

9.14. Notwithstanding my conclusions above, the Commission should note that the applicant has referenced a previous An Coimisiún Pleanála case (i.e. ABP-307417-20) where it is contended that this sets precedent for a finding of an intensification of use which would not have any material planning impact or consequences on proper planning and sustainable development, and therefore does not constitute a material change of use.

9.15. I have reviewed this case and note that it was a referral on the question of whether a change of use of meeting rooms and office space to 10 no. bedrooms within a hotel constituted development and/or exempted development. I note that the Commission decided that the change of use did not constitute an intensification of use due to it not having any material planning impact over and above the existing operation of the established hotel use. It should be noted that the 10 no. bedrooms represented an 8% increase on the existing bed numbers within the hotel.

9.16. The Commission should note that I consider the question sought in this case is not similar to 307417-20 and thus precedent has not been set for a conclusion of no material change of use. I consider that the replacement of offices and meeting spaces with bedrooms within an established hotel has substantially different planning and environmental considerations to that of an increase of c. 19,000 birds within a poultry farm.

The Question of ‘exempted development’

9.17. The second question to determine is whether the development is exempted development under the Act or the Planning and Development Regulations 2001, as amended (herein referred to as “*the Regulations*”). As highlighted above, the Commission should note that there are two elements to the question, one being the actual proposed works to the structures and the other being the proposed material change of use.

9.18. With regards to the proposed works, the applicant contends that they are exempted development under Section 4(1)(h) of the Act. With regards to the potential material change of use, the applicant contends that it comes within the exempted development provision of Section 4(1)(a) of the Act, due to the use being for the purposes of agriculture and Section 4(1)(a) not specifying that an intensification of use is a material factor in, or restricts, its applicability. I note that the applicant does not seek an exemption under the Regulations.

Section 4(1)(a) – Use

9.19. I note that the wording of Section 4(1)(a) of the Act is "development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used". Whilst I acknowledge that the word "development" is used within Section 4(1)(a), it should be noted that the Section 3(1) definition of development is subject to "except where the context otherwise requires". It is this wording within Section 3(1) that acknowledges that there may be circumstances where a narrow meaning of the word 'development' must be ascribed. I will now draw the Commission's attention to the relevant case law on the matter; that being the judgement of the High Court in Noel Cunningham v An Bord Pleanála v Sligo County Council [2013, IEHC 234]. [3]

9.20. The Commission should note that this was a case which related to the erection of an agricultural shed. The judgement considered that it represented an instance where the context required a more limited meaning of the word 'development' as referenced in Section 3(1), or it would lead to "absurd consequences". It was considered that if the meaning under Section 3(1) was employed under Section 4(1)(a) without qualification it would expand the definition of development under Section 4(1)(a) to include the carrying out of works. It concluded that this would radically distort the exemption where the Oireachtas plainly intended that the development in question must consist of only the use of the land and buildings for agricultural purposes.

9.21. I consider a similar circumstance arises in the subject question before the Commission. The applicant contends that as the definition does not specify that an intensification of use is a material factor or restricts its applicability within Section 4(1)(a) then the development must be exempted development as it is for the purposes of agriculture.

[3] https://ww2.courts.ie/view/judgments/751a74cc-59ee-402e-aa34-b0987fde5d02/6c3ac604-f0eb-429b-b583-87485366453f/2013_IEHC_234_1.pdf/pdf (*Accessed 9th June 2026*)

9.22. Firstly, it should be noted that it is the default position under Section 32 of the Act that all development requires permission. Therefore, the fact that an intensification is not specified within Section 4(1)(a) does not lead to a conclusion that it must not be a material factor in or restricts its applicability. Secondly, I have already determined that the intensification of use in question does represent a material change of use and, thus, does comes within the Section 3(1) definition of development. However, as with the IEHC 234 judgement of the High Court, I consider that the subject case is an instance where the context requires a more limited meaning of the word development set out in Section 3(1). I consider that if a material change of use did fall under the Section 4(1)(a) meaning of development then it would also lead to unintended consequences.

9.23. It would mean in effect that an applicant could apply for planning permission for a poultry house measuring 1,486sqm, provide information on certain bird numbers to the planning authority as part of that application, be granted permission on the basis of this submitted information, and then subsequently, decides to increase the capacity to a significant level on the basis of it being agricultural without the benefit of planning permission. Similarly, I consider that this would not reflect the plain reality of the legislation as drafted, and ultimately, would undermine the whole system of planning and environmental control for the poultry sector. Therefore, to conclude, I consider that the general exemption for agricultural purposes contained in Section 4(1)(a) of the Act does not apply to a material change of use.

9.24. Notwithstanding my conclusions above, the Commission should note that the applicant has referenced case ABP-311366-21 for a similar conclusion on exempted development. I note that this is a referral relating to a question on whether the use of an existing agricultural shed to house pigs amounts to a change of use. I note that it relates to an increase in floorspace to an existing shed with no increase in the number of pigs to be housed and, therefore, I do not consider it similar to the subject question. The decision of the Commission in this case was quashed by Order of the High Court and is currently remitted back under a new reference number (ref. 320954). As such, no decision has been made to date.

Section 4(1)(h) - Works

9.25. The Commission should note that the wording of Section 4(1)(h) allows for development to be exempted development if it consists of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. It is important to highlight that this provision only applies to works and not to any proposed material change in use which such works are intended to facilitate. Therefore, the Commission should note that if such proposed works are to be considered exempted development, this does not override my conclusions above in relation to Section 4(1)(a).

9.26. Having inspected the site, I observed that the two poultry houses appeared to have been constructed in accordance with the plans approved under application refs. 15/324 and 15/523. The proposed internal works are illustrated on page 4 of the applicant's submitted report and involve the removal of the existing flat deck/slatted housing system and replacement with a multi-tier aviary housing system. This new system is described as supporting bird welfare and producing higher egg output and improved quality. It is my view that these works represent works for the improvement and alteration of the structure and only affect the interior of the structure. Therefore, I am satisfied that they can be considered exempted development under Section 4(1)(h) of the Act.

9.27. The other element of the proposed works involves an opening in the external side wall in order to facilitate a manure belt conveyor where manure will be removed from the house on a weekly basis. The proposed house type is shown on page 4 of the submitted report, however, the legibility of the drawing is unclear. For example, it is difficult to interpret how many openings are proposed or the dimensions of same. Whilst such proposed changes would likely fall under the Section 4(1)(h) provision, in the absence of a legible drawing illustrating same, the Commission should note that I cannot provide a determination regarding these works. Ordinarily, I would recommend the Commission to request further information in this regard, however, having regard to the nature of the works to facilitate an increase in birds, which I have already determined to constitute a material change of use, it may not consider it necessary to pursue this matter.

Restrictions on exempted development – Section 4(4)

9.28. The Commission should note that under Section 4(4) of the Act the benefit of exempted development under Section 4(1)(a) or 4(1)(h) may be lost where the proposed development is subject to Appropriate Assessment (AA) or Environmental Impact Assessment (EIA). Notwithstanding my conclusion above in relation to Section 4(1)(a), I will proceed to assess whether the overall proposed development should be subject to AA and/or EIA.

Appropriate Assessment (AA)

9.29. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in the AA Screening, as set out within Appendix 2 of this report, I have determined that the development, individually or in combination with other plans or projects, would not be likely to give rise to significant effects on Lough Oughter and Associated Loughs Special Area of Conservation (SAC) (Site Code 000007) or Lough Oughter Complex Special Protection Area (SPA) (Site Code 004049), or any other European site, in view of the Conservation Objectives of those sites.

9.30. I have determined that an Appropriate Assessment (and submission of a NIS) is not required. Therefore, the Commission should note that the development is not subject to the restrictions on exempted development in terms of AA as set out in Section 4(4) of the Act. This determination is based on:

- The scientific information provided in the submitted Screening report.
- The absence of any hydrological connection between the site and any European site.
- The separation distance regarding other potential ecological pathways.
- No in-combination/cumulative effects arise as all lands to be used for land spreading are governed by the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2025 S.I. No. 588/2025 (“the GAP regulations”). These regulations apply to all lands and are not considered a mitigation measure.

9.31. The Commission should note that no mitigation measures aimed at avoiding or reducing impacts on European sites were required to be considered in reaching this determination.

Environmental Impact Assessment (EIA)

9.32. I refer the Commission to Appendix 1 of the report in this regard. I have determined that due to the scale of increase in proposed bird numbers within the existing poultry houses, and in the absence of Schedule 7a information, I have significant and realistic doubt regarding the likelihood of significant effects on the environment. I consider that Schedule 7a Information should be provided by the applicant in order for a screening determination to be carried out. The Commission should note that I do not consider that the proposed internal works, or the opening(s) to the side wall of the structures, warrants the requirement for Schedule 7a information and I am satisfied that these works are not subject to EIA.

10.0 Recommendation

I recommend that the Commission should decide this referral in accordance with the following draft order:

Planning and Development Act 2000, as amended

Planning Authority: Cavan County Council

Planning Register Reference Number: 435

WHEREAS a question has arisen as to whether the refurbishment of two existing poultry houses granted permission under application refs. 15/324 and 15/523, involving the replacement of existing internal equipment consisting of a flat deck / slatted housing system with a multi-tier aviary housing system, including an opening to the side wall to facilitate a manure belt conveyor, to facilitate an increase in bird numbers from 16,000 (cumulative between the two houses) to c. 35,000, is or is not development and is or is not exempted development:

AND WHEREAS Finbar Kiernan requested a declaration on this question from Cavan County Council on 24th October 2025:

AND WHEREAS Cavan County Council referred this question to An Coimisiún Pleanála on 25th November 2025, under Section 5(4) of the Planning and Development Act 2000, as amended;

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to:

(a) The planning history pertaining to the site, in particular planning application reference numbers 15/324 and 15/523 and the information provided by the applicant as part of each application,

(b) Section 2(1) of the Planning and Development Act 2000, as amended,

(c) Section 3(1) of the Planning and Development Act 2000, as amended,

(d) Section 4(1)(a) and 4(1)(h) of the Planning and Development Act 2000, as amended,

(e) Section 4(4) of the Planning and Development Act 2000, as amended,

(f) The documentation on file,

(g) Relevant case law, and

(h) The report and recommendation of the Inspector.

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) The change in housing system to facilitate an increase in bird numbers from 16,000 (cumulatively between the two poultry houses approved under planning application reference numbers 15/324 and 15/523) to c.35,000 birds constitutes development, as it constitutes a material change of use of the structures by reason of intensification;

(b) The general exemption for agricultural purposes contained in Section 4(1)(a) of the Planning and Development Act 2000, as amended, does not apply to a material change of use, and therefore, the material change of use is not considered exempted development under this provision;

(c) The material change of use does not come within any of the other exempted development provisions of the Planning and Development Act 2000, as amended, or the Planning and Development Regulations 2001, as amended;

(d) The proposed refurbishment works to remove the existing flat deck/slatted housing system and its replacement with a multi-tier aviary housing system, including manure conveyor belt and opening(s), constitutes development, as it involves works in, on, over or under land;

(e) The removal of the existing flat deck/slatted housing system and its replacement with a multi-tier aviary housing system comprises of works for the maintenance, improvement or other alteration of the structure, being works that affect only the interior of the structure, and therefore, are considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended;

(f) On the basis of the information submitted with the application in terms of the legibility of the submitted drawings, a determination cannot be made on whether the opening(s) to the side wall of the structures to facilitate a manure belt conveyor is exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended. A request for further information was not deemed necessary due to the purpose of the works to facilitate a material change of use, which is considered not exempted development.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the proposed material change of use of the poultry houses is development and is not exempted development, whilst the associated internal works to the interior of the structure comprising the removal of the existing flat deck/slatted housing system and its replacement with a multi-tier aviary housing system, is development and is exempted development.

Declaration

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Gary Farrelly
Planning Inspector
9th June 2026

Appendix 1: EIA

Form 1 - EIA Pre-Screening

Case Reference	ACP-323892-25
Proposed Development Summary	The refurbishment of 2 no. existing poultry houses previously approved under application refs. 15/324 and 15/523 to facilitate an increase in bird numbers from 16,000 to c. 35,000
Development Address	Ballyhugh, Ballyconnell, County Cavan
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ ~~No, No further action required.~~
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ ~~Yes, it is a Class specified in Part 1.~~	
☒ No, it is not a Class specified in Part 1. Proceed to Q3 Whilst Class 17 relates to installations for the intensive rearing of poultry with more than 85,000 places for broilers or 60,000 places for hens, the proposed development does not meet or exceed this mandatory threshold.	

<table>
<tr><td colspan="2">3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</td></tr>
<tr><td>☐ ~~No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.~~

~~No Screening required.~~</td><td></td></tr>
<tr><td>☐ ~~Yes, the proposed development is of a Class and meets/exceeds the threshold.~~

~~EIA is Mandatory. No Screening Required~~</td><td></td></tr>
<tr><td>☒ Yes, the proposed development is of a Class but is sub-threshold.

Preliminary examination required. (Form 2)

OR

If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</td><td>Class 1(e)(i) Installations for intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry.

- The proposed development is for a material change of use to provide an installation of a total of 35,000 places for poultry and is therefore subthreshold.</td></tr>
<tr><td colspan="2">4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</td></tr>
<tr><td>No ☒</td><td>Pre-screening determination conclusion remains as above (Q1 to Q3)</td></tr>
</table>

Form 2 - EIA Preliminary Examination

This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	The Commission should note that the applicant has not provided a EIA Screening report as part of the application. I note that a screening report was not provided as part of application ref. 15/324 or 15/523. The proposed material change of use will result in the installation of 35,000 places for poultry between the two houses, which I note is only 5,000 places below the appropriate threshold for EIA, and represents 88% of the appropriate threshold. I also note that is proposed to change the nature of the poultry farm from 16,000 free range hens to 16,000 free range and 19,000 barn housed hens. Due to the size of the proposed development in the absence of Schedule 7a information, I have significant and realistic doubt regarding the likelihood of significant effects on the environment. I consider that Schedule 7a information should be provided in order for a screening determination to be carried out.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g.	The site represents an established poultry farm. However, there are approximately 15 residential properties within c. 500 metres of the farmyard, with the nearest dwelling located approximately 90 metres to the northeast. I consider that Schedule 7a information should be provided in order to establish whether there would be any significant effect on

wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	population and human health including in terms of odour and air emissions, and noise. The site is located approximately 700 metres from the Lough Oughter and Associated Loughs SAC. I refer the Commission to Appendix 2 in this regard.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	I consider due to the proximity to residential receptors there is potential for an impact on population and human health. In the absence of Schedule 7a information, a determination cannot be made on whether the impact would be significant in terms of its intensity, expected onset, duration and frequency.
Conclusion	
Likelihood of Significant Effects	**Conclusion in respect of EIA**
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	**Schedule 7A Information required to enable a Screening Determination to be carried out.**

Gary Farrelly
Planning Inspector

9th June 2026

Assistant Director of Planning
9th June 2026

Appendix 2: AA Screening

Screening for Appropriate Assessment Test for likely significant effects	
Step 1: Description of the project and local site characteristics	
Brief description of project	The project involves the refurbishment of two existing poultry houses which will provide an upgraded multi-tier aviary housing system. This will replace the existing flat deck / slatted housing system. Works will involve the installation of internal house fixtures and fittings with the exception of an opening to the side wall to facilitate a manure belt conveyor. It is proposed to increase the bird stock in house number 1 from 8,000 to 16,000 and in house number 2 from 8,000 to 19,000. Manure will be removed from the houses to a manure store by a conveyor on a weekly basis. Poultry litter will be removed off site for use as fertiliser on tillage farms.
Brief description of development site characteristics and potential impact mechanisms	The site is located within an established poultry farm yard that was granted permission under application refs. 15/324 and 15/523 and is surrounded by agricultural fields. The subject site occupies elevated ground relative to the surrounding area. Dungummin Lough is located approximately 370 metres west of the farm yard. There are no surface waterbodies within the subject site.
Screening report	Yes (author Whitehill Environmental)

Natura Impact Statement (NIS)	No
Relevant Submissions	None

Step 2: Identification of relevant European sites using the Source-Pathway-Receptor model

Two European sites are potentially within a zone of influence of the proposed development as detailed within Table 1 below.

Table 1

European Site (Code)	Qualifying Interests (QIs)	Distance from proposed development	Ecological connections	Consider further in Screening (Y/N)
Lough Oughter and Associated Loughs SAC (000007)	• Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150] • Bog woodland [91D0]	The closest point via air is 452 metres northeast.	Air • Proximity via air Hydrological • Having inspected the site and having reviewed the Environmental	Yes, due to proximity

	• Lutra lutra (Otter) [1355]		Protection Agency (EPA) GIS mapping tool[4], I note that there are no surface waterbodies within the subject site providing a hydrological connection to any European site. <u>Hydrogeological</u> • There is a potential hydrogeological connection due to surrounding topography. However, having regard to the nature of the works proposed within an existing established structure permitted under previous planning permissions and constructed in accordance with DAFM standards, no significant effects are considered likely. The issue of land spreading is addressed below.	

[4] https://gis.epa.ie/EPAMaps/Water (Layers: River Flow Direction; Stream) (*Accessed 9th June 2026*)

Lough Oughter Complex SPA (004049)	• Great Crested Grebe (Podiceps cristatus) [A005] • Whooper Swan (Cygnus cygnus) [A038] • Wigeon (Mareca penelope) [A855] • Wetland and Waterbirds [A999]	The closest direct point via air is 5.2km southeast.	<u>Air</u> • Due to separation distance, no significant effects in terms of emissions or noise impacts are considered likely. All construction works will be internal with the exception of openings to a side wall. <u>Ex-Situ Effect</u> • No ex-situ effects are considered likely due to separation distance, intervening land uses, the established nature of the poultry farm and the preferred foraging and roosting locations for [A005] and [A855]. Whilst [A038] can be found foraging on grasslands, in general the foraging distance from night roosts is estimated to be less than 5km.[5] Having regard to this and to	No

[5] https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004049.pdf (*Accessed 9th June 2026*)

			the number of lands between the sites, no ex-situ effects are likely.	

Step 3: Describe the likely significant effects of the project (if any, alone or in combination) on European sites

Site Name **Qualifying Interests**	**Possibility of significant effects (alone) in view of the conservation objectives of the site**	
Lough Oughter and Associated Loughs SAC	**Impacts**	**Effects**
• Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150] • Bog woodland [91D0] • Lutra lutra (Otter) [1355]	<u>Release of atmospheric emissions during the operational phase</u> The proposed development seeks to increase the numbers of birds on site from 16,000 to 35,000. <u>Land spreading</u>	Release of emissions could result in eutrophication of nearby lakes, which is the main environmental problem facing the designated site.[6] The submitted screening report outlines that whilst the bird numbers will increase, there will be an 18% reduction in ammonia from the current

[6] https://www.npws.ie/sites/default/files/publications/pdf/Conaghan_1999_Lough_Oughter.pdf (*Accessed 9th June 2026*)

	The applicant proposes to move poultry litter offsite for use as fertiliser on outside tillage farms. Soiled water will be directed to storage tanks prior to its application on suitable landholdings. The Commission should note that I have addressed the issue of land spreading below as part of the in-combination impact.	baseline of 5,040kg to 4,120kg due to the upgrading with low emissions specifications. Having regard to the established nature of the poultry buildings, to the c. 780 metre separation distance from the nearest poultry house to the designated site and to the reduction in ammonia emissions as a result of the proposed development, no significant effects are considered likely.
Likelihood of significant effects from proposed development (alone)	No	
If No, is there a likelihood of significant effects occurring in combination with other plans or projects?	No. The spreading of organic fertilisers is managed under the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2025 (*herein referred to as "the GAP regulations 2025"*). These regulations are for the purpose of preventing water pollution. They provide for the limitation of quantities of nitrates and phosphate that can be directly applied to land. Surface water is protected through the provision of buffers from surface water features. Groundwater is protected by the prohibition of direct discharge to groundwater and measures to prevent indirect pollution through discharge to ground and percolation through the soil. Therefore, I am satisfied, subject to the adherence to the GAP Regulations 2025, that no in-combination or cumulative impacts arise from any land spreading associated with the proposed development. I consider that the GAP	

	regulations for the control of land spreading is not a mitigation measure for the purpose of preventing a significant effect on any European site as this is governed by regulation and applies to all land where spreading takes place, to prevent pollution to surface water and groundwater.

Step 4: Conclude if the proposed development could result in likely significant effects on a European site

I conclude that the proposed development (alone or in combination with other plans and projects) would not result in likely significant effects on European sites. No further assessment is required for the project. No mitigation measures are required to come to this determination.